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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

NO. 202 MISCELLANEOUS

FRANK A. BARNES,
Plaintiff-Appellant,

vs.

NATIONAL BROADCASTING COMPANY, INC.,
AMERICAN BROADCASTING COMPANY,
COLUMBIA BROADCASTING SYSTEM, INC., et al.,
Defendants-Appellees.

MOTION OF COLUMBIA BROADCASTING SYSTEM, INC., DEFENDANT-APPELLEE, TO DISMISS THE APPEAL.

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The Scheffer Press, Inc.—ANdover 3-6850

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Defendants-Appellees.

MOTION OF COLUMBIA BROADCASTING SYSTEM, INC., DEFENDANT-APPELLEE, TO DISMISS THE APPEAL.

This Appellee hereby moves to dismiss the appeal on the ground that no right of direct appeal from the District Court to the Supreme Court exists in the instant case; that if such right did exist the appeal was not taken in time; and that the question presented is so unsubstantial as not to need further argument in the Supreme Court.

NATURE OF PROCEEDING.

The complaint in the above-entitled action designated by plaintiff as "Petition of Law" and filed in the District Court for the Northern District of Illinois, seeks to en-

force an alleged private right for damages based upon Section 315(a) of the Federal Communications Act of 1934, as amended in 1952. It alleges that the plaintiff became a candidate for the Presidential nomination in 1952 on either the Democratic or Republican ticket; that the defendants provided free radio and television facilities to Mr. Eisenhower on the occasion of a speech made by him on June 6, 1952, at Abilene, Kansas, announcing his candidacy for the nomination on the Republican ticket; that plaintiff requested the defendants to give him the same free equal time and facilities which they gave to Mr. Eisenhower; and that defendants declined so to do, resulting in injury and damage to the plaintiff for which he asks judgment in the amount of $200,000,000 against each defendant.

This defendant filed a motion to dismiss the complaint upon the following grounds: that it failed to allege facts which would constitute a violation of section 315(a) of the Federal Communications Act of 1934, as amended; that said Act does not authorize or create any private right of action to recover damages for alleged violations of Section 315(a) thereof; that the plaintiff had failed to exhaust the administrative remedies available to him under the Federal Communications Act of 1934, as amended; that if a cause of action ever existed it was barred by the applicable statute of limitations; and that the matter was res adjudicata by reason of a decision adverse to the plaintiff in a prior proceeding involving the same parties and the same subject matter.

On April 8, 1957, the District Court sustained defendant's motion and dismissed the complaint. On July 15, 1957, the plaintiff filed a notice of appeal to this Court from the order dismissing his complaint.

This appeal should be dismissed for the reason that no statutory right exists to take a direct appeal to the

Supreme Court from an order of the District Court dismissing the complaint in a civil action in which no agency of the United States was a party. The jurisdictional statement filed herein mistakenly refers to U.S.C. Title 28, Section 2101(c) as providing such right of appeal. Manifestly this section does not grant or create any right of appeal, and even if it did, the instant appeal would be untimely, as taken more than 90 days after the entry of the order.

The jurisdictional statement filed herein seeks to present for review by this Court matters which were never raised in the District Court or even considered there. The sole question before the District Court was whether the allegations in the complaint were legally sufficient to entitle the plaintiff to any relief. The reckless assertions in the jurisdictional statement reach a wanton climax of baselessness in charging defendant with perjury and the lower Court with misbehavior, perjury and misfeasance.

The complaint herein is so completely lacking in merit that a mere reading thereof will disclose that this appeal presents no question of substantiality which would require further argument in the Supreme Court. Wherefore, this defendant-appellee respectfully asks that the appeal be dismissed.

Respectfully submitted,

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